IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 30 of 1997

For Approval and Signature:

HON'BLE MR.JUSTICE KSHITIJ R.VYAS
and
HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GANPATBHAI AASHABHAI PATANVADIYA

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 30 of 1997

MR KG SHETH for Appellant No.

MR RC KODEKAR, APP for Respondent No. 1-State

CORAM : HON'BLE MR.JUSTICE KSHITIJ R.VYAS
and
HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 25/11/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE KSHITIJ R.VYAS)

The appellant (original accused) in this appeal, has challenged the judgment and order dated 24.12.1996 in Sessions Case No. 196 of 1995 passed by the learned Addl.Sessions Judge, Bharuch, convicting him for the offence punishable under Sec.302 of IPC, sentencing him

to suffer RI for life and to pay a fine of Rs.500/-, in default, to undergo further RI for one month.

2. The appellant was charged for the offence under Sec.302 of IPC for committing murder of deceased Hasmukhbhai of village Vadadala, Taluka Jhambhusar. According to the informant - Nagjibhai Zaverbhai, on 17.9.1995 at about 9.00 p.m. the appellant came near the house of the informant in a drunken condition, giving abuses in filthy language. Hasmukhbhai, son of the informant asked the appellant not to give abuses. The appellant refused to oblige, and on the contrary, got excited. Hasmukhbhai gave two-three slaps to him. Thereafter, at about 12.30 in the mid-night, the informant heard cries of his son Hasmukhbhai who was sleeping on the outside Otta of the house. On hearing the cries, the informant and his wife opened the door and saw the appellant inflicting Axe blows on the head of Hasmukhbhai. Many persons residing in the surrounding areas also gathered there on hearing the cries. The appellant fled with the Axe, in the meantime. The informant, on seeing the condition of his son, arranged for a Taxi and took his injured son to Kavi Hospital, where the Doctor declared Hasmukhbhai dead. Thereafter the complaint was filed before the PSI, Kavi Police Station. Raghunath Pavar, PSI of Kavi Police Station, who recorded the complaint, started usual investigation thereafter. After collecting the sufficient material against the accused appellant, the chargesheet was filed before the learned JMFC, Jhambhusar, who in turn, committed the case to the Sessions Court, Bharuch, as the offence under Sec.302 of IPC was exclusively triable by the said Court.

3. The Charge Exh.2 for the offence under Sec.302 of IPC and Sec.135 of the Bombay Police Act was framed against the appellant. The appellant pleaded not guilty and claimed to be tried. The learned trial Judge, after considering the oral as well as documentary evidence including the statement recorded under Sec.313 of Cr.PC recorded the finding that the prosecution has established the charge under Sec.302 of IPC levelled against the appellant, beyond reasonable doubt. He, therefore, convicted the appellant for the said offence and passed the sentence as stated in the earlier part of this judgment. The learned Judge, however, gave the benefit of doubt under Sec.135 of the Bombay Police Act. Hence, the present appeal.

4. To make good the case against the appellant, the prosecution has placed reliance on the evidence of

informant Nagjibhai Zaverbhai at Exh.5, Narsinh Gumansinh at Exh.7, Udesinh Himatbhai at Exh.8, who according to the prosecution, have witnessed the actual incident.

Nagjibhai Zaverbhai - PW1 - informant, in the present case has deposed that the appellant, on the day in question, came at about 9.00 p.m. in a drunken condition and started misbehaving. When he was advised by his son Hasmukhbhai to behave properly, the appellant got excited. On account of this, Hasmukhbhai gave two slaps to the appellant and took him to his house. The informant thereafter slept inside the room with his wife while Hasmukhbhai was sleeping outside the Otta of the house. At about 12.30 in the mid-night, Hasmukhbhai cried. On hearing the cries, he opened the door and came out with his wife. According to the informant, the appellant was giving blows with Axe to his son Hasmukhbhai. He also saw Gumansinh, Narsinh and Udesinh who are staying opposite to his house coming out from their houses, on hearing the cries. On seeing the serious condition of his son, he requested one Ramsinh Rupsinh, President of Taluka Panchayat, to arrange for the transport. Accordingly, a Taxi from village Jangadal was called and his injured son Hasmukhbhai was taken in the Taxi accompanied by Gumansinh, Narsinh and one Ramanbhai to the Hospital at Kavi, where the Doctor declared Hasmukhbhai dead. The informant thereafter gave a complaint to the PSI of Kavi Police Station.

5. The above witness has been cross examined at length. However, nothing substantial has been brought out in the cross examination by the defence. It is true that certain contradictions have been brought out from his evidence but in our opinion they are quite minor and insignificant. This witness has tried to improve his version which was not there in the complaint, namely, that the deceased gave two slaps to the appellant and took him to his house. This witness has also improved his version by stating that on hearing the cries, he and his wife came out from the room. Likewise, he has also not stated in his complaint, namely, that he talked to Ramsinh and arranged for transport. He accordingly brought a Taxi from village Jangadal. He has also not stated in the complaint that after getting the slaps from the deceased, the appellant kept quiet and slept. As stated above, the aforesaid contradictions/omissions are too insignificant and in any case, make the version given by the informant unreliable and unnatural. Apart from that, nothing has been brought out in the cross examination as far as the actual incident is concerned. Needless to say that the informant, in his evidence,

stood the test of cross examination successfully by remaining consistent as to whatever he has stated in his examination in chief.

6. Mr.K.G.Sheth, learned Advocate appearing for the appellant criticizes the evidence of this witness Nagjibhai by contending that the evidence of this witness, to have witnessed the incident is doubtful, as from the evidence of other eye witness, namely, Narsinhbhai - PW2, who came after the incident. Our attention was invited by learned Advocate to the cross examination of Narsinhbhai - PW2 wherein he has stated that Nagjibhai, after coming out of the room, inquired from him as to how the incident happened, to which he (Narsinhbhai) replied that he has not beaten him. Mr.Sheth also submitted that even the conduct of Nagjibhai is also unnatural even though he saw his son was being beaten up, instead of rushing there and to save him, he stood and watched the incident. Finally, it was submitted that it is on the basis of mere belief on the part of the informant that the appellant assaulted the deceased on the basis of an incident happened earlier at 9.00 p.m., when the appellant was being beaten up by the deceased.

7. After having carefully examined the evidence of Nagjibhai, we find that his evidence is required to be accepted in toto. His evidence is required to be read as a whole and not by picking up some sentences from the cross examination of other witnesses. The evidence of this witness cannot make his presence doubtful when the incident happened. He, being the father of the deceased, on hearing the cries, immediately opened the door, came out and saw the appellant inflicting blows to his son. He has also seen the presence of Narsinhbhai - PW2 and Udesinh - PW3 who are the neighbours gathered there on hearing the cries of the deceased and this witness is not inquiring from the said witnesses as to how the incident happened. Therefore, merely because Narsinhbhai - PW2 gives out the version that Nagjibhai inquired from him as to what happened, will not, in any case, make the evidence of this witness doubtful as to his presence, and he having witnessed the incident. While visualising the incident, it appears that this witness might have taken some time while coming out of his room and thereafter to watch the incident. It is quite possible that when he opened the door, the appellant started inflicting blows. Under the circumstances, while in shock and before he could realise anything and to take immediate action, stood there and by that time, the appellant, after giving the assault, fled. Therefore, merely because the

informant did not intervene and or did nothing to save his son, cannot be used against this witness so as to make his presence doubtful at the time of occurrence of the incident.

8. The evidence of Narsinhbhai - PW2 as well as Udesinh -PW3 is almost on the same lines of the evidence of informant, Nagjibhai. We would therefore like to avoid repetition of the reproduction of the evidence of these witnesses. These two witnesses reside just opposite to the house of the informant. The informant gets total corroboration from their evidence. On short scrutiny of their evidence, we do not see any major, inconsistency and/or discrepancies in their evidence. We, therefore, have no hesitation to hold that they are natural witnesses, having witnessed the incident and there is no reason to discard their evidence.

9. Mr.Sheth, learned Advocate for the appellant however, challenged their evidence by contending that no reliance can be placed on their evidence especially when Narsinhbhai -PW2 in his evidence has admitted that he had no good relation with the appellant. According to learned Advocate, Narsinhbhai - PW2 had reasons to involve the appellant falsely as he had no good relation with him. True, in the cross examination, Narsinhbhai has admitted that he is not having cordial relation with the appellant. Even if we accept the said fact, it is too much to say that Narsinhbhai - PW2 would falsely involve the appellant in the serious offence of murder. True, the defence, in the cross examination has come out with certain suggestions, namely, that deceased had got certain relation with the sister of this witness. It was suggested that his sister Devi has slept out of the house on the Otta, however, the suggestion has simply remained as suggestion only as this witness has denied the same. By connecting the suggestion with a sentence uttered by this witness when the informant inquired as to how the incident happened, this witness stated that he had not killed him, will not lead us to conclude that this witness Narsinhbhai - PW2 had any reason to commit the murder of the deceased. There is nothing on record to suggest that the deceased was in love with the sister of Narsinhbhai - PW2, which was not liked by him and therefore, he was interested in getting rid of the deceased.

10. Learned Advocate Mr.Sheth for the appellant has challenged the evidence of Udesinh - PW3, by contending that even this witness has sufficient reasons to falsely involve the appellant in the offence in question. From

the evidence of this witness, it appears that this witness's own sister's daughter was married to the appellant and both of them got separated because of the divorce having been given by the appellant before three years. It is true that Udesinh PW3, in his cross examination, has admitted the fact of divorce having been given by the appellant to the daughter of the sister of this witness. However, he has denied that because of the same, he was bearing grudge against him. In any case, it is too much to say that becuse appellant gave divorce and that too before three years, PW3 on that count falsely involve appellant. In view of this, it is not possible for us to accept the submission that the appellant was falsely involved by this witness on this ground. Assuming that Udesinh - PW3 had some grievance to make against the appellant, there is nothing on record to show that Narsinhhai - PW2 and Udesinh PW3, who are the neighbours had cordial relation with Nagjibhai - PW1 and all the three have conspired to involve the appellant in the serious offence of murder. In this view of the matter, we hardly see any substance in the submissions advanced on behalf of the appellant.

11. The evidence of these witnesses is duly supported with the medical evidence. Dr.Kantilal C. Patel - PW8 who performed the post mortem of the deceased, found the following external injuries:

(1) C.L.W. on forehead at middle, Horizontal in direction Size - 8 cm x 2 cm x 2 cm.

(2) C.L.W. 'T' shape, Horizontal between two eyebrows and on Right eye brow, Size - 5 cm x 1 cm x 1 cm and vertical from middle of two eye brows to nose downwards Size - 3 cm x 1/2 c, x 1 cm.

(3) C.L.W. above right eye brow on forehead, Transverse in direction Size - 3 cm x 1 cm x 1 cm.

(4) C.L.W. below right eye, Transverse in direction Size - 2 cm x 1/2 cm x 1/2 cm.

(5) C.L.W. below nose on upper lip with full cut of lip, oblique in direction from upward downwards to right side upto lip, Size - 4 cm x 1 cm x 1 cm.

The Doctor also noticed the following internal injuries:

Fracture of both frontal Temporal bones, Nasal bones and Right maxillary bone and upper jaw. Brain lacerated from front and brain metter coming out of the vault of skull.

According to Dr.Kantilal C.Patel, the cause of death was shock due to head injury and hemorrhage. The injuries are possible with hard and blunt substance by the weapon like Axe.

12. The defence has not challenged the medical evidence and therefore, the prosecution, in our opinion, has established the involvement of the appellant in the offence in question through oral evidence supported with medical evidence. Apart from that, the prosecution has also established the discovery of Muddamal Axe, stained with human blood and the recovery of the clothes having blood stains of the group of the deceased. True, as far as the discovery of the Muddamal Axe is concerned, the panchas have not supported it. However, having seen the evidence of the concerned Panchas, namely, Shantilal Parmar - PW7 and Amarsinh Parmar - PW9, though they turned hostile, having admitted their signatures on the Panchnama, at Exh.17 and the receipt at Exh.18, we are convinced beyond any manner of doubt the involvement of the appellant in the offence for which he was charged. In our opinion, the learned trial Judge was perfectly justified in convicting the appellant for the offence fsunder Sec.302 of IPC. We hardly see any reason to interfere with the reasoning as well as the ultimate conclusion reached by the learned trial Judge. Suffice it to say that we are in total agreement with the same. We, therefore, see no merit in this appeal. The same is dismissed.

(Kshitij R.Vyas, J.)

(Akshay H.Mehta, J.)
Sreeram.